

Pro Se 15 (Rev. 12/16) Complaint for Violation of Civil Rights (Non-Prisoner)

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

## UNITED STATES DISTRICT COURT

2020 OCT 16 AM 11:11

for the

CLERK-ALBUQUERQUE

District of \_\_\_\_\_

New Mexico Division

20cv1069 JCH-KK

Case No. \_\_\_\_\_

(to be filled in by the Clerk's Office)

JA'WAYNE HELFFERICH

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Jury Trial: (check one) ☒ Yes ☐ No

STATE OF NEW MEXICO, "see attached"

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS  
(Non-Prisoner Complaint)

## NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

**I. The Parties to This Complaint****A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name Ja'wayne Heffferich  
 Address 810 Bellamah Ave. NW, Apt. 5  
Albuquerque NM 87102  
City State Zip Code  
 County Bernalillo  
 Telephone Number 505-250-9845  
 E-Mail Address JaWayne1969@gmail.com

**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

**Defendant No. 1**

Name State of New Mexico  
 Job or Title (if known) Corrections Department & Representative  
 Address 408 Galisteo Street  
Santa Fe NM 87501  
City State Zip Code  
 County Santa Fe  
 Telephone Number 505-490-4066  
 E-Mail Address (if known)

☐ Individual capacity ☒ Official capacity

**Defendant No. 2**

Name Management and Training Corporation  
 Job or Title (if known) Corporation  
 Address 500 N. Marketplace Drive  
Centerville UT 84014  
City State Zip Code  
 County Davis County  
 Telephone Number 801-693-2600  
 E-Mail Address (if known)

☒ Individual capacity ☒ Official capacity

## Defendant No. 3

Name

Gtegg Marcantel

Job or Title (if known)

Previous Secretary of Corrections

Address

unknown

City

State

Zip Code

County

unknown

Telephone Number

E-Mail Address (if known)



Individual capacity



Official capacity

## Defendant No. 4

Name

David Jablonst.

Job or Title (if known)

Previous Acting Secretary of Corrections

Address

unknown

City

State

Zip Code

County

unknown

Telephone Number

E-Mail Address (if known)



Individual capacity



Official capacity

"See Attached"

## II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

Federal officials (a *Bivens* claim)

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

The 8<sup>th</sup> and 14<sup>th</sup> Amendment of The Constitution of The United States.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?



- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

*The defendants with willfull and intentional disregard, unlawfully and without due process terminated my good time (GMD) knowing it would lengthen my prison term. Also, placing me in harras way intintionally to a different prison.*

### III. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. Where did the events giving rise to your claim(s) occur?

*At the Otero County Prison facility operated by Management and Training Corp.*

- B. What date and approximate time did the events giving rise to your claim(s) occur?

*June 27, 2014 and ongoing till release on October 18<sup>th</sup>, 2018*

- C. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?) In an attempt by the classification heads and their supervisors of (MTC) to force me into the sex offender program my earned meritorious deductions were terminated for not agreeing to change my program status. Policy for S.O.P. at that time stated I would receive a major misconduct report but I was denied that process, and yet classification terminated my good time without any disciplinary report. I was subjected to the same process a year and a half later and I still did not receive a disciplinary report, but was sent to another prison (The Roswell correctional facility). For three months I lived in extreme fear for my life as no words can describe. They placed 4 of us with the same stigma (sex offender) on a bus with inmates from another prison knowing that all inmates know who "see attached"

**IV. Injuries**

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

*Extreme emotional distress. - was prescribed medication for this at the Los Lunas Level II correctional facility*

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**V. Relief**

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

*petitioner seeks monetary damages in the amount of \$1200.00 for every day spent in prison for the EMO terminated and/or any punitive damages this court or the Jury decide that is appropriate. A finding that the policy for S.O.T.P. is unlawful and/or unconstitutional. That petitioners EMO was terminated without due process and/or the punishments he received violated the Eighth Amendment.*

**VI. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 10-15-2020

Signature of Plaintiff

Printed Name of Plaintiff

Jaiwagne Helfferich  
Jaiwagne Helfferich

**B. For Attorneys**

Date of signing: \_\_\_\_\_

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address



**ATTACHMENT TO COMPLAINT FOR VIOLATION OF CIVIL RIGHTS****ADDITIONAL DEFENDANTS**

MANAGEMENT AND TRAINING CORPORATION, Prior Secretary of Corrections GREGG MARCANTEL, Prior Acting Secretary of Corrections DAVID JABLONSKI, Secretary of Corrections ALISHA TAFOYA LUCERO, Director of Adult Prisons JERRY ROARK, Deputy Secretary of Operations JOE W. BOOKER, Jr., Prior Bureau Chief PAULA BURNS, Prior Deputy Bureau Chief COLLEEN MACARNEY, Contract compliance Officer EBITH CRUZ-MARTINEZ, Warden JAMES FRAWNER, Warden RICARDO MARTINEZ, Classification Supervisor LINDA NOLASCO, Classification Officer VERONICA ANDRADE, Et.al UNKNOWN AND UNNAMED DEFENDANTS.

**ADDITIONAL ATTACHMENT OF DEFENDANTS**

## Defendant No. 5

Name

Alisha TaFoya Lucero

Job or Title (if known)

Secretary of Corrections

Address

4337 NM 14

Santa Fe

City

NM

State

87502-0116

Zip Code

County

Santa Fe

Telephone Number

505-727-8645

E-Mail Address (if known)

☐ Individual capacity☒ Official capacity

## Defendant No. 6

Name

Jerry Roark

Job or Title (if known)

Prior Director of Adult prisons

Address

unknown

City

State

Zip Code

County

unknown

Telephone Number

E-Mail Address (if known)

☒ Individual capacity☒ Official capacity

Defendant No. 7

Name

Joe W. Becher, Jr.

Job or Title (if known)

Prior Deputy Secretary of Operations

Address

unknown

City

State

Zip Code

County

unknown

Telephone Number

E-Mail Address (if known)

☒

Individual capacity

☒

Official capacity

Defendant No. 8

Name

Paula Burns

Job or Title (if known)

Prior Bureau Chief

Address

unknown

City

State

Zip Code

County

unknown

Telephone Number

E-Mail Address (if known)

☒

Individual capacity

☒

Official capacity

Defendant No. 9

Name

Colleen MacFarney

Job or Title (if known)

Prior Deputy Bureau Chief

Address

unknown

City

State

Zip Code

County

unknown

Telephone Number

E-Mail Address (if known)

☒

Individual capacity

☒

Official capacity



## DefendantNo.10

Name

Ebeth Cruz-Martinez

Job or Title (if known)

Prior Contract Compliance Officer

Address

unknown

City

State

Zip Code

County

unknown

Telephone Number

E-Mail Address (if known)



Individual capacity



Official capacity

## DefendantNo.11

Name

James Frawner

Job or Title (if known)

Prior warden Otero county prison Facility

Address

unknown

City

State

Zip Code

County

unknown

Telephone Number

E-Mail Address (if known)



Individual capacity



Official capacity

## DefendantNo.12

Name

Ricardo Martinez

Job or Title (if known)

Warden @ Otero county prison Facility

Address

10 McGregor Range Rd.

Chaparral

City

N.M.

State

88081

Zip Code

County

Otero

Telephone Number

575-824-4884

E-Mail Address (if known)



Individual capacity



Official capacity

## Defendant No. 13

Name  
 Job or Title (if known)  
 Address  
  
 County  
 Telephone Number  
 E-Mail Address (if known)

Linda Nolasco  
Classification Supervisor  
10 McGregor Range Rd.  
Chaparral N.M. 88081  
 City State Zip Code

☒ Individual capacity ☒ Official capacity

## Defendant No. 14

Name  
 Job or Title (if known)  
 Address  
  
 County  
 Telephone Number  
 E-Mail Address (if known)

Veronica Andrade  
Classification Officer  
10 McGregor Range Rd.  
Chaparral N.M. 88081  
 City State Zip Code

☐ Individual capacity ☐ Official capacity

## Defendant No. 15

Name  
 Job or Title (if known)  
 Address  
  
 County  
 Telephone Number  
 E-Mail Address (if known)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 City State Zip Code

☐ Individual capacity ☐ Official capacity

**ADDITIONAL ATTACHMENT TO III. C.**

Reside at the Otero County prison facility (Sex Offenders). I personally witnessed one of the inmates that came with this get hit so hard I didn't think you would get up and then kicked 3 feet off the ground. Earlier that day another inmate would like charges was beat up by 15 inmates. A few days later the remaining two and I sought protective custody and were only granted this by great extremes. Two of us received major write ups that were later dismissed. We suffered and endured extreme punishment for three days without showers toothbrushes and constant harassment from the guards in cages no more than 4' x 4' in diameter. The heads of the Department of Corrections blatantly ignored or capitulated with the staff of MTC on any appeal I sought about my good time and intentionally put me in harm's way. Neither my judgment and sentence, state law, or punishment in the New Mexico Department of Corrections disciplinary policy articulate a mandate sex offender treatment while in prison or authorize a punishment of termination for it. Policy clearly states that I must agree and accept a program while in prison. The legislature removed termination as a punishment in 1988. Furthermore, classification upon arriving in the department corrections stipulated that I did not want to be referred to sex offender and/or sexual victimization treatment while incarcerated. With extreme deliberate indifference and cruel and unusual punishment without due process petitioner was forced to stay imprisoned for over five months past his release date due to the department heads of the New Mexico Department of corrections the department heads of management training Corporation as the stated defendants. In the last year petitioner's stay imprisoned the totality of all that occurred that caused great emotional distress upon petitioner, so much so that he sought mental health and was given medication for anxiety and depression while at the Los Lunas prison. Note petitioner was well aware that he would have to take the program while on parole by authority of state law and has since completed it. Also, petitioner has no record of any right up on his record in his eight-year tenure in prison and programmed the entire time earning 2 degrees and approximately 25 certificates from college, mental health programs, and other programs.



